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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL ALAN CROOKER, Plaintiff, v. ASSOCIATED RECOVERY SYSTEMS, Defendant.	CASE NO. 08 CV 0630 JAH JMA **OPPOSITION TO MOTION TO REMAND**

MEMORANDUM OF POINTS AND AUTHORITIES

I. REMOVAL IS APPROPRIATE BECAUSE PLAINTIFF ALLEGED A CAUSE OF ACTION UNDER FEDERAL LAW.

Removal is appropriate because Plaintiff's complaint alleges a cause of action for violation of the federal Fair Debt Collection Practices Act 15 U.S.C. § 1692.

28 U.S.C. § 1441(b) provides, "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. (28 U.S.C. § 1441(b).) Federal courts have original jurisdiction over all civil actions that arise under the Constitution or laws of

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the United States. (28 U.S.C. § 1331.)

Plaintiffs complaint is clear and unambiguous, and specifically alleges an independent cause of action for violation of the federal Fair Debt Collection Practices Act ("FDCPA"). The first paragraph of Plaintiffs complaint makes clear that the complaint alleges a cause of action for violation of the FDCPA. Specifically, the complaint provides as follows, "This is a civil action against a debt collector pursuant to the state and federal Fair Debt Collection Practices Acts." (Emphasis added).

Accordingly, because plaintiff alleges a federal claim, Defendant has the right to a federal forum. (See *Barraclough v. ADP Automotive Claims Services,* 818 F.Supp.1310, 1312 (N.D.Cal. 1993), holding "[b]ecause plaintiff is asserting a federal claim (whether or not meritorious), defendant has a right to a federal forum.)

II. PLAINTIFF'S MOTION TO REMAND IS IMPROPER

Despite the fact that Plaintiff only cites out of state authority in his Motion to Remand, Plaintiff fails to attach any of the decisions he relies upon. As such, Plaintiff's motion is not supported by any law or evidence.

III. THIS COURT HAS SUPPLEMENTAL JURISDICTION OVER THE STATE-LAW CLAIMS PURSUANT TO § 1367(a).

The Supreme Court has held that "supplemental jurisdiction allows federal courts to hear and decide state-law claims along with federal-law claims when they 'are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.'" Wisconsin Dept. of Corrections v. Schacht, 524 U.S. 381, 387 (1998) (quoting 28 U.S.C. § 1367(a)). Indeed, the supplemental jurisdiction statute provides that:

> in any civil action of which the district courts have original jurisdiction, the district courts **shall** have supplemental jurisdiction over **all other claims** that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.

28 U.S.C. § 1367(a) (emphasis added).

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It is clear that the facts for each cause of action in Plaintiff's Complaint form part of the same case under § 1367 and are sufficient for supplemental jurisdiction here. In fact, Plaintiff does not separate his allegations at all. All of the facts alleged in the Complaint relates to both the state and federal action.

IV. VOLUNTARY ABSTENTION IS NOT APPROPRIATE

Although, Defendant does not see an argument regarding abstention in Plaintiff's motion, since Plaintiff's motion is exceedingly vague, Defendant will briefly address the issue. This court has the discretion to abstain in the "interest of justice, or in the interest of comity with State courts or respect for State law." (28 U.S.C. § 1334(c)(i).) However, discretionary abstention is wholly uncalled for in this action.

First, the court in *SPI* rejected discretionary abstention. The court stated, "resolution of the dispute will involve consideration of both substantive and procedural bankruptcy law." (*SPI, supra*, 112 B.R. at p. 512.)

Second, in this case the there is absolutely no facts in this case which would warrant abstention in the from the Court. In addition, the doctrine of abstention is a very narrow exception.

> The Supreme Court has stated that **the doctrine of abstention "is an extraordinary and narrow exception** to the duty of a District Court to adjudicate a controversy properly before it." Federal courts need not abstain from deciding every issue of state law that the state's courts have not had occasion to decide. Because arguments can be presented in an infinite number of ways, a contrary holding would render abstention the rule rather than the "extraordinary and narrow" exception that it is.

Hillery v. Rushen, 720 F.2d 1132, 1137 (9th Cir. 1983) (quoting County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188 (1959)) (citations omitted) (emphasis added).

As in Hillery, this court should not abstain from this case. To hold otherwise would render abstention the rule rather than the "extraordinary and narrow" exception that it is.

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V. CONCLUSION

For the aforementioned reasons, this Court should Deny Plaintiff's Motion to Remand to State Court and/or Abstention.

DATED: May 12, 2008

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CERTIFICATE OF MAILING

I certify that on the 12th day of May 2008, I electronically transmitted the foregoing document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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